

HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

WRIT PETITION No.22633 OF 2004

Between:

Vecha Venkatasubbamma

... Petitioner

AND

The Secretary to the Government,
Revenue (FF.I) Department,
Secretariat, A.P., Hyderabad

... Respondent

:: O R D E R ::

Counsel for the petitioner
Reddy

: Shri S. Sreenivas

Counsel for the respondent

: Government Pleader for
Revenue

March 7, 2007

In this petition, the petitioner has prayed for issue of a mandamus to the respondent to restore the pension sanctioned to her by the State Government under the Andhra Pradesh Freedom Fighters Pension Rules, 1978 (for short, 'the Rules').

In pursuance of the sanction accorded by the State Government

vide G.O.Ms.No.3691, Revenue (F.F.II) Department, dated 8.8.1980, the petitioner was paid pension up to 27.10.1982 by being treated as widow of the freedom fighter. With effect from 28.10.1982, the payment of pension was stopped because the government discovered that the petitioner's husband does not fall within the definition of freedom fighter under Rule 5(b) of the Rules.

The petitioner has questioned the action of the government to stop payment of pension to her primarily on the ground of violation of the rules of natural justice and arbitrary exercise of power.

In the counter affidavit filed on behalf of the respondent, Shri V. Veeresham, Deputy Secretary to Government, Revenue Department has justified the discontinuance of the payment of pension to the petitioner by asserting that G.O.Ms.No.3691, dated 8.8.1980 was issued under a mistaken impression that she was widow of the freedom fighter. In paragraph 3 of his affidavit, Shri V. Veeresham has detailed the circumstances and reasons which prompted the respondent to stop payment of pension to the petitioner. The same reads as under:

"It is submitted that the petitioner who is widow of late Narayana of Madhira Town, Khammam District submitted an application on 28-5-1979 in Form – A for grant of pension from the Government of Andhra Pradesh admissible to the families of the freedom fighters giving the various details and it is a fact that the Government has issued G.O.Ms.No.3691, dt. 8-8-1990 sanctioning provisional pension under State Scheme with effect from 6-3-1978. It is also made clear in the Government order that the pension will be subject to review by the Government without any notice, if it is found that the same is sanctioned on mistaken grounds or on false information. However, the Government subsequently identified irregular grants and Government issued G.O.Ms.No.762, Revenue (FF.II) Department dt.7-5-1981 stopping payment of pension to 170 pensioners belonging to Khammam District and the petitioner is

one among the said 170 pensioners. Further, the Government has issued various orders from time to time amending its earlier orders. As per G.O.Ms.No.1445, Revenue (FF.1) Department, dated 16-09-1981 the freedom fighters who were in prison as under trial for not less than 7 days are eligible for freedom fighters pension. In view of amended G.O. dt.16-9-1981, the claim of pensioners whose pension was stopped under G.O.Ms.No.72, dt. 7-5-1981 were reviewed and identified 69 eligible persons out of 170 who had jail certificates available with them indicating imprisonment as under trials for more than 7 days. Pursuant to G.O.Ms.NO.762, dt.7-5-1981, the Government in its Memo.No.4606/FF.III/A1/79, dt. 23-3-1982 requested the petitioner to submit the jail certificate of her husband as required. The petitioner has not responded to the said Memo. nor submitted any jail certificates showing imprisonment as under trail for more than 7 days as required under G.O.Ms.No.1445 Revenue Dept., dt. 16-9-1981. The original application in Form – A submitted by the petitioner about the particulars of imprisonment suffered by her husband in para 5 would show that her husband was never in jail. The said particulars are extracted. The particulars given by the petitioner is as follows:-

“Criminal Case CC.No.32/03/001355/F on the file of Munsif Magistrate Court, Madhira under section 72 of Defence Act of Hyderabad was filed against the husband of the applicant and the said court has convicted and sentenced to pay a fine of Rs.25/- and in default to undergo within 2 weeks imprisonment. Paid fine of Rs.25/-”

Thus the particulars given by her in her application in Form.A clearly indicates that the husband of the petitioner was never imprisoned and was sentenced to pay Rs.25/- and in default to undergo imprisonment for two weeks. It is stated by the petitioner that the fine of Rs.25/- was paid. Thus, the husband of the petitioner was never imprisoned making her eligible for pension at any point of time under any Government Order. The pension paid to her till 1982 with retrospective date from 1978 is also liable to be recovered. However, in view of the special circumstances, the Government has not been contemplating any steps for recovery of the pension already received either

from the petitioner or from other similarly placed persons. For the foregoing reasons the petitioner is not entitled for any relief and the same is liable to be dismissed.”

The petitioner has not filed rejoinder affidavit to controvert the above reproduced averments. Therefore, I shall decide the writ petition on the premise that her husband had not suffered imprisonment.

Shri Sreenivas Reddy relied on the judgment of the Supreme Court in **Union of India v. Shri Avtar Singh**^[1] and argued that while deciding the claim of the freedom fighter or his widow, the Court should take a liberal view and should not be swayed by the technicalities. Learned counsel further argued that after having sanctioned pension in favour of the petitioner, the respondent could not have abruptly stopped payment of pension on the premise that her husband was not a freedom fighter and, in any case, such a decision could not have been taken without complying with the rules of natural justice.

The learned Government Pleader argued that the petitioner’s husband cannot be treated as freedom fighter within the meaning of Rule 5(b) of the Rules because he had not suffered imprisonment even for a single day. He pointed out that for the purpose of the Rules, a person can be treated as freedom fighter only if he had actually suffered imprisonment for at least seven days and submitted that the Court may not direct restoration of pension to the petitioner ignoring the fact that her husband did not suffer actual imprisonment. Learned Government Pleader relied on the judgment of the Supreme Court in **Union of India v. Manohar Lal Azad**^[2] and argued that the decision of the Government to stop payment of pension to the petitioner is

legally correct, because her husband was wrongly treated as a freedom fighter.

I have considered the respective submissions. There is no dispute between the parties that even though the petitioner's husband Sri Narayana had been convicted for an offence under Section 72 of the Defence Act of Hyderabad and was sentenced to two weeks imprisonment, he did not suffer imprisonment even for a single day. Rather, with a view to avoid imprisonment, he paid fine of Rs.25/. In this view of the matter, it must be held that the petitioner's husband did not fall within the definition of freedom fighter under Rule 5(b) of the Rules and the sanction accorded by the State Government for payment of pension to the petitioner was based on an erroneous assumption about her entitlement to receive pension. In **Manohar Lal Azad's** case (supra), the Supreme Court interpreted the provisions contained in paragraph 4(a) of Swatantrata Sainik Samman Pension Scheme, 1980 which is *pari materia* to Rule 5(b) of the Rules and held:

“A perusal of this clause makes it abundantly clear that what is germane is suffering a minimum imprisonment of six months in the mainland before independence but not merely suffering an order awarding imprisonment of six months by a competent court. Explanation 2 to para 4, however, treats the period of normal remission up to one month as part of actual imprisonment.

In the case of Surja the writ petitioners were sentenced to imprisonment for a term exceeding six months. While they were undergoing sentence, without their praying for any remission, a general amnesty was declared by the then Nizam on his birthday. Consequently, the sentence was reduced and the petitioners were set free. It was in the backdrop of these facts that this Court observed: (SCC p. 368, para 7)

“In the facts of the case it would be appropriate to hold that each of the petitioners satisfied the condition for earning the benefit of pension and the fact that while undergoing sentence which was for a period beyond six months' remission had been granted and they were let off earlier would not take away their right to earn

pension. Learned Attorney-General appearing for the respondents has accepted this construction of the entitlement clause.”

From the above observation it is clear that on the peculiar facts of that case it was held that each of the petitioners therein satisfied the condition for earning the benefit of pension. We are unable to read that judgment as laying down that where a person has been sentenced to imprisonment for six months or more but if he comes out within a month or so, for whatever reasons, without serving his sentence, he will still be a freedom fighter within the meaning of Scheme and eligible for the samman pension. To say so, in our opinion, would amount to giving a go-by to the definition of the expression “freedom fighter” and substituting new eligibility criteria for the Scheme enlarging its scope which is not only impermissible but also contrary to the spirit of the Scheme framed on the basis of the material and keeping in mind the class of the political sufferers who would be the beneficiaries of the Samman Pension Scheme”.

In view of the above legal position, it is not possible to entertain the petitioner’s prayer for issue of a mandamus to the respondents to release pension in her favour in terms of order dated 8-8-1990.

The argument of the learned counsel that the respondent could not have withheld payment of pension to the petitioner without complying with the rules of natural justice sounds attractive, but cannot be accepted because it is an undisputed position that the petitioner’s husband had not suffered actual imprisonment even for a single day and, therefore, he could not have been treated as freedom fighter. This being the position, non-compliance of the rules of natural justice must be treated as inconsequential. The empty/useless formality theory is now well recognised. In **Aligarh Muslim University v. Mansoor Ali Khan**^[3], **Karnataka State Road Transport Corporation v. S.G. Kotturappa**^[4], **Punjab National Bank v. Manjeet Singh**^[5], P.D.

Agarwal v. State Bank of India^[6] and Civil Appeal No.4671 of 2006 – **Ashok Kumar Sonkar v. Union of India and others** decided on 23-2-2007, the Supreme Court has applied the useless formality theory for negating the plea of violation of the rules of natural justice. The proposition laid down in those judgments can be aptly applied to the facts of this case.

For the reasons stated above, I hold that the petitioner has failed to make out a case for issue of a mandamus to the respondent to restore the pension payable to her in terms of G.O.Ms.No.3691, dated 8.8.1980 and the writ petition is liable to be dismissed. Ordered accordingly.

G.S.SINGHVI, C.J.

March 7, 2007

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^[1] 2006 (6) Supreme 386

^[2] (2002) 10 SCC 568

^[3] (2000) 7 SCC 529

^[4] (2005) 3 SCC 409

^[5] (2006) 8 SCC 647

^[6] (2006) 8 SCC 776